IN RE: PET FOOD PRODUCTS LIABILITY LITIGATION Doc. 117

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February 5, 2008

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Honorable Noel L. Hillman
United States District Court, District of New Jersey
Mitchell H. Cohen U.S. Courthouse, Room 6020
1 John F. Gerry Plaza
Camden, New Jersey 08101

Dear Judge Hillman:

The undersigned represents Del Monte Foods Co. ("Del Monte") and submits this letter on behalf of Del Monte, Nestle Purina PetCare Company ("Purina"), The Iams Company and The Proctor & Gamble Company (collectively, "P&G"), and Nutro Products, Inc. ("Nutro") (collectively "the Non-Menu Foods Manufacturing Defendants") in the above-referenced matter. This letter is respectfully submitted in response to the "Objection to Pet Food Evidence Disposal Plan Approved on December 18, 2007" (the "Objection") filed by Donald Earl in this proceeding on January 30, 2008 and in support of Menu Foods, Inc.'s response to the Objection also filed on this date.

Rather than burdening the Court with a recitation of the arguments advanced by Menu Foods as to why the Objection should be denied, the undersigned adopt Menu Foods' arguments and incorporate them by reference herein. It is critically important for the Court to note, however, that Mr. Earl has not sued any of the Non-Menu Foods Manufacturing Defendants in Washington state or any other forum. Moreover, the Objection does not allege that Mr. Earl purchased any of the Non-Menu Foods Manufacturing Defendants' products, that his pets consumed any such products, or that any of the Non-Menu Foods Manufacturing Defendants manufactured pet food containing cyanuric acid, acetaminophen or any other toxin. In fact, the Objection makes no mention of the Non-Menu Foods Manufacturing Defendants at all.

Most importantly, the Objection fails to address the health and safety issues facing each of the defendants that are storing vast quantities of recalled product or the FDA's clear directives to destroy such product. Notwithstanding the foregoing, Mr. Earl seeks to deny all defendants the ability to destroy unorganized product, as authorized by this Court's Order of December 18, 2007.

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The Court's December 18, 2007 Order was the direct result of protracted negotiations between plaintiffs' and defense counsel. Those negotiations included the exchange of well-reasoned expert opinions, an expert deposition and motion practice initiated by Del Monte. The Objection, however, is based on nothing more than misguided and unfounded accusations and is overly broad, in that it seeks to limit the ability of all defendants to destroy unorganized product. We therefore respectfully request that this Court deny Mr. Earl's Objection.

Respectfully submitted

COZEN O'CONNOR

By: Richard Fama

cc: Donald Earl
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